

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 97-7364

KEITH A. BARKLEY,

Plaintiff - Appellant,

versus

M. R. REYNOLDS, Lieutenant, Unit Commander
#006; SANDAR L. BOYD, L.P.N. Medical Nurse;
JACQUELINE J. TYLER, Captain, Supervisor
Commander; C. WARR, Sergeant, Watch Commander
#0024; T. J. TYUS, Sergeant, Watch Commander
#33; C. M. POTTER, Lieutenant, Watch Commander
#16,

Defendants - Appellees.

Appeal from the United States District Court for the Eastern Dis-
trict of Virginia, at Norfolk. Raymond A. Jackson, District Judge.
(CA-97-507-2)

Submitted: November 20, 1997

Decided: December 11, 1997

Before MURNAGHAN, MICHAEL, and MOTZ, Circuit Judges.

Dismissed by unpublished per curiam opinion.

Keith A. Barkley, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.
See Local Rule 36(c).

PER CURIAM:

Appellant appeals the district court's order dismissing his 42 U.S.C. § 1983 (1994) complaint without prejudice for failure to exhaust administrative remedies under 42 U.S.C.A. § 1997e(a) (West Supp. 1997). We dismiss the appeal for lack of jurisdiction because the order is not appealable. This court may exercise jurisdiction only over final orders, 28 U.S.C. § 1291 (1994), and certain interlocutory and collateral orders, 28 U.S.C. § 1292 (1994); Fed. R. Civ. P. 54(b); Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541 (1949). The order here appealed is neither a final order nor an appealable interlocutory or collateral order.

We note that Appellant submitted with his notice of appeal materials which may support his contention that he exhausted administrative remedies. These materials were not presented to the district court and will not be considered in the first instance by this court. Because Appellant may be able to save this action by amending his complaint in the district court, the order dismissing his § 1983 action without prejudice is not appealable. See Domino Sugar Corp. v. Sugar Workers Local Union 392, 10 F.3d 1064, 1066-67 (4th Cir. 1993). We therefore dismiss the appeal as interlocutory. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED